

**UNITED
NATIONS**



International Residual Mechanism
for Criminal Tribunals

Case No.: MICT-17-111-R90-
AR14.1

Date: 24 February 2020

Original: English

IN THE APPEALS CHAMBER

Before: Judge Carmel Agius, Presiding
Judge José Ricardo de Prada Solaesa
Judge Graciela Susana Gatti Santana

Registrar: Mr. Olufemi Elias

Decision of: 24 February 2020

IN THE CASE AGAINST

**PETAR JOJIĆ
VJERICA RADETA**

PUBLIC

**DECISION ON REPUBLIC OF SERBIA'S APPEAL AGAINST THE
DECISION RE-EXAMINING THE REFERRAL OF A CASE**

Office of the Prosecutor:

Mr. Serge Brammertz

Amicus Curiae Prosecutor

Ms. Diana Ellis
Mr. Sam Blom-Cooper

Government of the Republic of Serbia

1. The Appeals Chamber of the International Residual Mechanism for Criminal Tribunals (“Appeals Chamber” and “Mechanism” respectively)¹ is seised of an appeal filed by the Republic of Serbia (“Serbia”)² against the decision that re-examines and revokes the referral of *In the case against Petar Jojić and Vjerica Radeta*, Case No. MICT-17-111-R90 (“Impugned Decision”).³ The *Amicus Curiae* Prosecutor filed her response on 18 July 2019,⁴ and Serbia filed its reply on 25 July 2019.⁵

I. BACKGROUND

2. On 30 October 2012, a Trial Chamber of the International Criminal Tribunal for the former Yugoslavia (“ICTY”) issued an order in lieu of an indictment charging, *inter alios*, Petar Jojić and Vjerica Radeta (collectively, “Accused”) with contempt of the ICTY for allegedly having threatened, intimidated, offered bribes to, or otherwise interfered with witnesses in the case of *Prosecutor v. Vojislav Šešelj*, Case No. IT-03-67 (“Šešelj case”).⁶ On 29 November 2017, with the warrants of arrest and orders for the Accused to surrender⁷ remaining outstanding, the ICTY President ordered that the case against the Accused be transferred to the Mechanism as the successor institution to the ICTY and the International Criminal Tribunal for Rwanda (“ICTR”).⁸

¹ Order Assigning Judges to a Bench of the Appeals Chamber, 18 June 2019 (“Order of 18 June 2019”), p. 1.

² Appeal of the Republic of Serbia against the Decision of the Single Judge of 13 May 2019, 8 July 2019 (confidential) (“Appeal”) (original version received on 10 June 2019).

³ Appeal, p. 16, referring to *In the Case Against Petar Jojić, Jovica Ostojić, and Vjerica Radeta*, Case No. MICT-17-111-R90, Decision Re-Examining the Referral of a Case to the Republic of Serbia, 13 May 2019 (public with confidential and public redacted annexes). See *In the Case Against Petar Jojić and Vjerica Radeta*, Case No. MICT-17-111-R90, Public Redacted Version of the 12 June 2018 Order Referring a Case to the Republic of Serbia, 12 June 2018 (with public redacted versions of confidential annexes A and B) (“Referral Order”).

⁴ Response to Appeal Against Decision Re-Examining the Referral of a Case to the Republic of Serbia, 18 July 2019 (“Response”).

⁵ Reply of the Republic of Serbia to the *Amicus Curiae* Prosecutor’s Response to the Appeal of the Republic of Serbia to the Decision of the Single Judge of 13 May 2019, 25 July 2019 (confidential) (“Reply”).

⁶ *Prosecutor v. Svetozar Džigurski et al.*, Case No. IT-03-67-R77.5, Decision Issuing Order in Lieu of Indictment, 30 October 2012 (confidential and *ex parte*), p. 3. See *Prosecutor v. Svetozar Džigurski et al.*, Case No. IT-03-67-R77.5, Further Decision on Order in Lieu of Indictment, 5 December 2014 (confidential and *ex parte*); *In the Case Against Petar Jojić, Jovo Ostojić, and Vjerica Radeta*, Case No. IT 03-67-R77.5, Revised Order in Lieu of Indictment, 17 August 2017 (confidential and *ex parte* Annex A, confidential Annex B, and public Annex C), Annex C (“Indictment”). See also *In the Case Against Petar Jojić, Jovica Ostojić, and Vjerica Radeta*, Case No. IT-03-67-R77.5, Order Lifting Confidentiality of Order in Lieu of Indictment and Arrest Warrants, 1 December 2015 (“Order of 1 December 2015”).

⁷ See *In the Case Against Petar Jojić, Jovo Ostojić, and Vjerica Radeta*, Case No. IT-03-67-R77.5, International Arrest Warrant and Order for Surrender [re Petar Jojić], 5 October 2016 (confidential and *ex parte*); *In the Case Against Petar Jojić, Jovo Ostojić, and Vjerica Radeta*, Case No. IT-03-67-R77.5, International Arrest Warrant and Order for Surrender [re Vjerica Radeta], 5 October 2016 (confidential and *ex parte*). See also *In the case against Petar Jojić, Jovo Ostojić, and Vjerica Radeta*, Case No. IT-03-67-R77.5, Order Lifting Confidentiality of International Arrest Warrants, 29 November 2016; Order of 1 December 2015.

⁸ See *In the Case Against Petar Jojić and Vjerica Radeta*, Case No. IT-03-67-R77.5, Order of Transfer to the International Residual Mechanism for Criminal Tribunals, 29 November 2017, pp. 3, 4 (including the transfer of all judicial records concerning this case in the ICTY’s custody).

3. On 12 June 2018, a Single Judge of the Mechanism issued the Referral Order, thereby referring the case against the Accused to Serbia after finding that the requirements of Articles 1(4), 6(2)(i), 6(2)(iii), and 6(4) of the Statute of the Mechanism (“Statute”) were met.⁹ The *Amicus Curiae* Prosecutor appealed the Referral Order, and, on 12 December 2018, the Appeals Chamber remanded the matter to the Single Judge for consideration of further submissions from the *Amicus Curiae* Prosecutor, Serbia, and, if necessary, the Witness Support and Protection Unit of the Mechanism (“WISP”) on the issue of “the unwillingness of the witnesses to testify if the case is tried in Serbia”.¹⁰

4. In its Decision of 12 December 2018, the Appeals Chamber noted that the *Amicus Curiae* Prosecutor cannot claim on appeal the issue of the unwillingness of the witnesses to testify if the case is tried in Serbia, as it was not raised before the Single Judge, and that she had not provided any evidence to substantiate these new arguments.¹¹ However, it nevertheless remanded the matter to the Single Judge given the importance of ensuring that witnesses will appear when called and of facilitating the attendance of witnesses through the provision of appropriate protective measures, which are important factors that should be considered in the determination of whether it is in the interests of justice to refer the case to Serbia.¹²

5. On 13 May 2019, the Single Judge issued the Impugned Decision. He considered, *inter alia*, the unwillingness of the witnesses to disclose their personal information to Serbian authorities and to testify in Serbia, as well as the critical importance of their evidence for the case against the Accused.¹³ Ultimately, he found that the conditions for referral of the case to Serbia were not met and that it was in the interests of justice to revoke the Referral Order.¹⁴

6. On 4 June 2019, Serbia filed its Notice of Appeal and, on 7 June 2019, the *Amicus Curiae* Prosecutor filed her Response to Notice of Appeal.¹⁵ On 24 June 2019, Serbia filed its Reply to Response to Notice of Appeal.¹⁶

⁹ Referral Order, pp. 3-5. The Appeals Chamber notes that a Single Judge previously had found that the Mechanism has jurisdiction over the case in accordance with Article 1(4) of the Statute. *See In the Case Against Petar Jojić and Vjerica Radeta*, Case No. MICT-17-111-R90, Decision on Jurisdiction, 18 January 2018, p. 2.

¹⁰ *In the Case Against Petar Jojić and Vjerica Radeta*, Case No. MICT-17-111-R90, Decision on the *Amicus Curiae*’s Appeal Against the Order Referring a Case to the Republic of Serbia, 12 December 2018 (“Decision of 12 December 2018”), paras. 22-24. *See also In the Case Against Petar Jojić and Vjerica Radeta*, Case No. MICT-17-111-R90, Order Replacing a Single Judge, 17 December 2018.

¹¹ Decision of 12 December 2018, para. 23.

¹² Decision of 12 December 2018, para. 23.

¹³ Impugned Decision, p. 5.

¹⁴ Impugned Decision, pp. 5, 6 (issuing new international arrest warrants and requesting Serbia to transfer the Accused to the seat of the Mechanism in The Hague without delay).

¹⁵ *See* Notice of Appeal of the Republic of Serbia against the Decision of the Single Judge of 13 May 2019, 4 June 2019 (confidential) (“Notice of Appeal”) (original version received on 29 May 2019); Response to a Notice of Appeal against

7. On 18 June 2019, the President assigned the matter to a bench of the Appeals Chamber.¹⁷ On 18 July 2019, Serbia filed its Appeal, requesting the Appeals Chamber to “revoke” the Impugned Decision.¹⁸ The *Amicus Curiae* Prosecutor filed her Response on 18 July 2019 and Serbia filed its Reply on 25 July 2019.

II. DISCUSSION

8. As a preliminary matter, the Appeals Chamber shall first address the *Amicus Curiae* Prosecutor’s submissions on whether Serbia has standing to appeal against the Impugned Decision.¹⁹ The Appeals Chamber recalls that a decision on whether or not to revoke a decision is subject to appellate review.²⁰ The Rules of Procedure and Evidence (“Rules”), however, are silent on whether a State, as opposed to a party to the proceedings, may appeal a decision to revoke a referral order. Nevertheless, the Appeals Chamber recalls that an appeal from a non-party may be considered where, in the circumstances of the particular case, doing so would serve the interests of justice.²¹ In determining whether consideration of an appeal by a non-party serves the interests of justice, the Appeals Chamber notes that factors previously considered include whether: (i) the interests of the non-party and the accused align; (ii) the appeal would infringe the accused’s interests; (iii) there was danger of unfairness to the Prosecution; and (iv) the Prosecutor opposed consideration of the appeal.²²

9. The Appeals Chamber further notes that, before a determination to revoke a referral order is made, Article 6(6) of the Statute explicitly requires that the State authorities concerned be given an opportunity to be heard. The Appeals Chamber understands that the State concerned is provided such a right given that the decision of whether or not to revoke a referral order directly affects the State and its conduct of the referred proceedings in its domestic jurisdiction. Thus, the Appeals Chamber considers that the impact a decision has on a State is also a relevant factor on the issue of

Decision Re-Examining the Referral of a Case to the Republic of Serbia, 7 June 2019 (“Response to Notice of Appeal”).

¹⁶ See Republic of Serbia’s Reply to the *Amicus Curiae* Prosecutor’s Response to the Republic of Serbia’s Notice of Appeal against the Decision of the Single Judge of 13 May 2019, 24 June 2019 (confidential) (“Reply to Response to Notice of Appeal”) (original version received on 18 June 2019).

¹⁷ See Order of 18 June 2019.

¹⁸ Appeal, p. 16.

¹⁹ See Response to Notice of Appeal, paras. 4, 8-10, 14. Cf. Reply to Response to Notice of Appeal, pp. 3, 4.

²⁰ *Prosecutor v. Radovan Stanković*, Case No. MICT-13-51, Decision on Stanković’s Appeal against Decision Denying Revocation of Referral and on the Prosecution’s Request for Extension of Time to Respond, 21 May 2014 (“*Stanković* Decision of 21 May 2014”), para. 9 and references therein. For reasons of consistency, the Appeals Chamber considered that such appeals should follow the same procedure as provided for in cases involving appeals from decisions on referral set out in Rule 14(E) of the Rules. See *Stanković* Decision of 21 May 2014, para. 9.

²¹ *Prosecutor v. Maximilien Turinabo et al.*, Case No. MICT-18-116-AR80.1, Decision on Appeals of the Decision in Relation to Material Seized from Dick Prudence Munyeshuli, 19 August 2019 (“*Turinabo et al.* Decision of 19 August 2019”), para. 30.

²² *Turinabo et al.* Decision of 19 August 2019, para. 30.

its standing. In this regard, the Appeals Chamber observes that Rule 134 of the Rules, although not raised in the present appeal, was adopted to explicitly allow a State to seek an Appeals Chamber review of a decision that affects its legal rights and which concerns issues of general importance regarding the powers of the Mechanism.²³

10. In the present case, the Appeals Chamber considers that factors weigh in favour of Serbia's standing, in particular given that the Accused themselves have indicated their desire to be tried in Serbia²⁴ and the impact that the present appeal has on Serbia. Moreover, especially since Serbia was heard in connection with the *Amicus Curiae* Prosecutor's appeal of the Referral Order²⁵ and then also heard in the first instance in the determination to revoke the Referral Order, the Appeals Chamber considers that a proper determination of the present matter requires Serbia to be given an opportunity to appeal the Impugned Decision. In this respect, the Appeals Chamber notes that granting leave to a concerned State to make submissions on appeal regarding the referral of a matter to that State is not novel. Indeed the ICTR Appeals Chamber granted such leave to a State, which had made submissions in the first instance, on an appeal of a decision denying a party's request to refer the case to that State.²⁶ In light of the foregoing, the Appeals Chamber rejects the *Amicus Curiae* Prosecutor's submissions and considers that it is in the interests of justice to grant Serbia leave to appeal the Impugned Decision.²⁷

11. Turning to the merits, the Appeals Chamber recalls that, in its Decision of 12 December 2018, it did not find any errors in the exercise of the Single Judge's discretion in

²³ See *Prosecutor v. Ante Gotovina et al.* Case No. IT-06-90-A, Decision on Motion to Intervene and Statement of Interest by the Republic of Serbia, 8 February 2012, para. 13; *Prosecutor v. Ante Gotovina et al.* Case No. IT-06-90-AR108bis.2, Decision on Croatia's Request for Review of the Trial Chamber's Decision on Provisional Release, 17 January 2008 ("*Gotovina* Decision of 17 January 2008"), paras. 5, 6. The Appeals Chamber notes that instances where it was determined that a State's legal rights were affected include where it was ordered to produce documents or records from its archives, and not where a State has provided a guarantee for a request for provisional release (see *Prosecutor v. Janko Bobetko*, Case No. IT-02-62-AR54bis & IT-02-62-AR108bis, Decision on Challenge by Croatia to Decision and Orders of Confirming Judge, 29 November 2002, para. 11) since such guarantees are not dispositive of provisional release determinations that require an assessment of various individual circumstances, of which guarantees are only a part of it (see *Gotovina* Decision of 17 January 2008, para. 12). The Appeals Chamber further notes that, where the State has failed to provide any arguments as to how the impugned decision concerns issues of general importance to the powers of the ICTY, exceptions for review have been made. See *Prosecutor v. Momčilo Perišić*, Case No. IT-04-81-AR108bis.4, Decision on the Republic of Serbia's Request for Review of the Trial Chamber's Decision of 15 February 2010, 15 April 2010, paras. 9, 11 (indicating the importance of the alleged interests at issue and taking into account the fact that the State has voluntarily provided the relevant material).

²⁴ Decision of 12 December 2018, para. 19.

²⁵ Decision of 12 December 2018, paras. 4, 9, 10.

²⁶ See *The Prosecutor v. Michel Bagaragaza*, Case No. ICTR-05-86-AR11bis, Decision on Rule 11bis Appeal, 30 August 2006, paras. 5, 7.

²⁷ With respect to the *Amicus Curiae* Prosecutor argument that the Notice of Appeal should be rejected as it was filed out of time (see Response to Notice of Appeal, paras. 11-13), the Appeals Chamber will accept the Notice of Appeal as validly filed given that there is good cause in that: (i) despite the filing date, the original document in B/C/S was signed by the Minister of Justice of Serbia on 28 May 2019 and transmitted to the Mechanism on 29 May 2019; and (ii) this is the first appeal by a State on a decision on the revocation of a referral order.

referring this case to Serbia.²⁸ Nevertheless, the Appeals Chamber remanded the matter to the Single Judge to consider further submissions from the *Amicus Curiae* Prosecutor, Serbia, and, if necessary the WISP in relation to new arguments advanced by the *Amicus Curiae* Prosecutor.²⁹ Specifically, it is recalled that the *Amicus Curiae* Prosecutor raised, for the first time on appeal, witness protection issues in relation to witnesses without providing any evidence to substantiate these new arguments.³⁰ Normally, in the absence of special circumstances, arguments raised for the first time on appeal where a party could have reasonably done so in the first instance, would be dismissed.³¹ However, given that the protection of essential witnesses is at the core of whether this case can proceed in Serbia, the Appeals Chamber considered that special circumstances existed in which the procedural failings of the parties could not be overlooked.³² Following remand, the Single Judge further heard from the *Amicus Curiae* Prosecutor, Serbia, and the WISP and decided on the basis of the information before him that this case could not proceed if referred to Serbia.³³

12. The Appeals Chamber recalls that, where an appeal is filed against a decision referring or revoking the referral of a case to a national jurisdiction for trial, the issue before the Appeals Chamber is not whether the Appeals Chamber agrees with it, but whether in reaching that decision discretion was correctly exercised by the Single Judge or Trial Chamber.³⁴

13. Serbia submits that the *Amicus Curiae* Prosecutor's submissions to the Single Judge that the witnesses are unwilling to cooperate with the Serbian authorities are false or not supported by evidence.³⁵ Serbia further submits that the witness protection system in Serbia is well developed and regulated in accordance with international human rights standards, and that the "availability of witnesses for testifying and the quality of their testimony are of paramount importance to the judicial system of the Republic of Serbia".³⁶ The *Amicus Curiae* Prosecutor responds that the Appeal should be dismissed, arguing that Serbia merely disagrees with the result of the Impugned

²⁸ See Decision of 12 December 2018, paras. 14-21.

²⁹ See *supra* para. 4.

³⁰ See *supra* para. 4.

³¹ See *Prosecutor v. Jean Uwinkindi*, Case No. MICT-12-25-AR14.1, Decision on an Appeal Concerning a Request for Revocation of a Referral, 4 October 2016, ("*Uwinkindi* Decision of 4 October 2016"), para. 20.

³² See Decision of 12 December 2018, para. 23.

³³ See *supra* para. 5.

³⁴ See Decision of 12 December 2018, para. 13; *Uwinkindi* Decision of 4 October 2016, para. 7; *Stanković* Decision of 21 May 2014, para. 12.

³⁵ Appeal, pp. 9-14; Reply, Registry Pagination ("RP.") 182-180. In view of the limited remand (*see supra* paras. 3, 11), the Appeals Chamber does not find it necessary to address Serbia's submissions that it is false or without support that: (i) it has failed to comply with its obligations under the Statute; (ii) the High Court in Belgrade has rendered the provisions of Rule 14 of the Rules redundant; (iii) it has failed to cooperate with the ICTY because of the political positions of the Accused; (iv) the proceedings in Serbia would be less expedient than before the Mechanism; (v) it has repeatedly stated that it will not transfer the Accused; (vi) the issue of immunity from prosecutions of deputies of the Serbian Assembly is of great significance; and (vii) there is widespread hostility to the ICTY in Serbia, including individuals in prominent government positions. See Appeal, pp. 2-8. See also Appeal, pp. 8, 9, 14.

³⁶ Appeal, pp. 9, 13-15. See Reply, RP. 182-180.

Decision and fails to demonstrate that it contains any error of law or is so unfair or unreasonable as to constitute an abuse of discretion.³⁷ Specifically, the *Amicus Curiae* Prosecutor submits that Serbia's submissions are irrelevant or incorrect.³⁸

14. At the outset, the Appeals Chamber considers that the preference in the Mechanism for contempt cases to be tried by national jurisdictions can only be understood as conditional, in particular and primarily in the context of this matter, as various factors specific to a case must be prudently considered.³⁹ In the present instance, the fundamental condition that must be assessed – and the sole reason for which this matter was remanded – is that the witnesses crucial to the viability of this case must be available to testify so that the case can proceed in Serbia.⁴⁰ In this context, the Appeals Chamber observes that the existence of a witness protection regime in a referral state and the existence of mechanisms for compulsory process and video-link are *prima facie* proof that a trial can be conducted, in particular in the face of general arguments of the unwillingness of witnesses to testify.⁴¹ Notwithstanding, the Appeals Chamber emphasizes that their mere existence alone cannot assuage every concern raised by a party and that the viability of a fair trial may hang in the balance, especially where specific arguments and evidence are presented demonstrating that they are not sufficient to secure the attendance of key witnesses.⁴² In such circumstances, deference must be accorded to the Single Judge or the Trial Chamber's determination of these matters.

15. Bearing this in mind, the Appeals Chamber finds that the Single Judge did not commit any errors of law or fail to take into account relevant considerations. In his decision, the Single Judge explicitly noted Serbia's submission on its witness protection measures.⁴³ However, considering the importance of ensuring that witnesses - whose evidence is paramount to the viability of the prosecution case since each count in the Indictment critically relies for support on their evidence - will appear to testify, the Single Judge ultimately found that the conditions for referral of this case to Serbia were not met.⁴⁴

16. In this respect, the Appeals Chamber notes the submissions before the Single Judge, in which the key witnesses indicated their unwillingness to testify in proceedings in Serbia despite

³⁷ Response, paras. 3, 13, 23, 24.

³⁸ See Response, paras. 14-23.

³⁹ See Decision of 12 December 2018, para. 21 (in which the Appeals Chamber indicated that where a State expresses a willingness and commitment to try a case over which it has jurisdiction, it should be given the opportunity to do so provided other relevant factors are satisfied).

⁴⁰ See Decision of 12 December 2018, para. 23.

⁴¹ See *Prosecutor v. Jean Uwinkindi*, ICTR-01-75-AR11bis, Decision on Uwinkindi's Appeal Against Referral of his Case to Rwanda and Related Motions, 16 December 2011 ("Uwinkindi Decision of 16 December 2011"), paras. 54-65.

⁴² See *Uwinkindi* Decision of 16 December 2011, paras. 66, 67.

⁴³ Impugned Decision, p. 3.

being well aware of protective measures available to them, including the possibility of giving evidence via video-link from outside Serbia.⁴⁵ These witnesses cited to fears for their and their family members' safety and security as the Accused, who were members of the defence team in the *Šešelj* case,⁴⁶ are currently high profile political figures in Serbia.⁴⁷ The Appeals Chamber further notes that some of these witnesses stated that they have already been subject to attacks due to their involvement as witnesses in the *Šešelj* case.⁴⁸ It is implicit in the Single Judge's determination that, on the basis of information before him, he found that Serbia's witness protection provisions could not allay the serious concerns of these crucial witnesses and that the measures available would not secure their appearance before the Serbian judiciary so that the case against the Accused could proceed.⁴⁹ This fact based enquiry does not diminish the ability, as a general matter, of the relevant Serbian authorities to ensure the protection of witnesses in important cases, but rather indicates that the Single Judge had concerns related to the submissions before him concerning this specific matter, a consideration to which the Appeals Chamber must give deference.⁵⁰

17. The Appeals Chamber further finds that the Single Judge did not err as to the facts he relied upon in exercising his discretion. With respect to Serbia's submission that there is no support for the submissions on the witnesses' unwillingness to testify should the case proceed in Serbia, the Appeals Chamber observes that the signed and dated witnesses' statements were before the Single Judge and that he explicitly noted that the WISP had contacted each of the witnesses to verify their statements and confirmed, having discussed the matter with them, that each stated they do not trust the Serbian authorities and would not provide evidence if the proceedings were referred to Serbia.⁵¹ There is nothing before the Appeals Chamber indicating the witnesses' positions are otherwise. Moreover, the Appeals Chamber sees no reason to doubt the Registrar's submission before the

⁴⁴ Impugned Decision, p. 5.

⁴⁵ *In the Case Against Petar Jojić and Vjerica Radeta*, Case No. MICT-17-111-R90, Submissions Pursuant to the Decision of the Appeals Chamber Dated 12 December 2018, 8 February 2019 (confidential and *ex parte*) ("*Amicus Curiae* Submissions of 8 February 2019"), paras. 6, 10, Registry Pagination ("RP."), 405, 404, 400-397, 393, 392. See Impugned Decision, p. 3 (noting the Registrar's submission that WISP has contacted each of the witnesses listed to verify their statements and confirms that each of the witnesses stated that they do not trust the authorities in Serbia and would not provide evidence if the case is referred to Serbia).

⁴⁶ See Indictment, p. 1.

⁴⁷ *Amicus Curiae* Submissions of 8 February 2019, paras. 6, 10, RP. 405, 404, 399-397, 393, 392.

⁴⁸ *Amicus Curiae* Submissions of 8 February 2019, RP. 405, 399, 387, 382. As a practical matter, the Appeals Chamber notes that the *Šešelj* case concerned the President of the Serbian Radical Party who was not only found guilty of serious violations of international humanitarian law crimes but also of contempt of court for knowingly and wilfully interfering with the administration of justice by disclosing confidential information on protected witnesses. See *Prosecutor v. Vojislav Šešelj*, Case No. MICT-16-99-A, Judgement, 11 April 2018, paras. 2, 181 (finding Vojislav Šešelj guilty of instigating persecution (forcible displacement), deportation, and other inhumane acts (forcible transfer) as crimes against humanity and for committing persecution (violation of the right to security) as a crime against humanity in Hrtkovci, Vojvodina); *In the Case Against Vojislav Šešelj*, Case No. IT-03-67-R77.2-A, Judgement, 19 May 2010, paras. 3, 42.

⁴⁹ Impugned Decision, p. 5.

⁵⁰ See *supra* para. 14.

⁵¹ Impugned Decision, p. 3. See *Amicus Curiae* Submissions of 8 February 2019, RP. 408-384.

Single Judge that the information from the witnesses “raises serious concerns as to the possible impact of a trial in Serbia might have on the safety, privacy, and wellbeing of the witnesses and their families” and finds no error in the Single Judge’s reliance on them.⁵² Accordingly, the Appeals Chamber must give deference to the Single Judge in this matter.

18. In sum, the Appeals Chamber considers that Serbia has not demonstrated that the Single Judge erred in the exercise of his discretion in determining that the information presented to him indicates that this case will not proceed if referred to Serbia. In light of the foregoing, having considered the submissions of the *Amicus Curiae* Prosecutor and Serbia, and having found no error on the part of the Single Judge, the Appeals Chamber denies Serbia’s Appeal. Accordingly, the Appeals Chamber therefore affirms the Impugned Decision.

III. DISPOSITION

19. For the foregoing reasons, the Appeals Chamber,

DENIES the Appeal in its entirety; and

AFFIRMS the Impugned Decision.

Done in English and in French, the English version being authoritative.

Done this 24th day of February 2020,
At The Hague,
The Netherlands



Judge Carmel Agius
Presiding Judge

[Seal of the Mechanism]

⁵² Impugned Decision, p. 3.



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